IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

CRP.No. 771 of 2006()

AGAINST THE ORDER DATED 08/06/2006 IN IN EP 21/2003 IN OS.249/1998 of MUNSIFF COURT,ALUVA .

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REVN. PETITIONER: DECREE HOLDER:

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1. **VARGHESE, AGED 66 YEARS,**
   AGRICULTURIST, S/O. VARGHESE,
   THALAPPILLY MATTATHIL VEETTIL,
   WW KOKKAPPILLY KARA, THIRUVANIYOOR VILLAGE.

2. **KURIACHAN, AGED 60 YEARS,**
   PENSIONER S/O. PAILY, THEYORKATTU VEETTIL,
   THIRUVANIYOOR KARA, THIRUVANIYOOR VILLAGE.

3. **JOHNY, AGED 43 YEARS,**
   BUSINESS, S/O. VARGHESE, OOMELIL VEETTIL,
   KOKKAPPILLY KARA, THIRUVANIYOOR VILLAGE.

BY ADV. SRI.P.K.SOYUZ

RESPONDENTS: JUDGMENT DEBTORS:

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1. **ST.JOHN'S YACOBAYA SURIYANI CHURCH,**
   KANNIYATTUNIRAPPU, THIRUVANIYOOR
   REPRESENTED BY ITS VICAR, FR.JOHN MOOLAMATTOM.

2. **FR.JOHN MOOLAMATTOM, VICAR**
   ST.JOHN'S YACOBAYA SURIYANI CHURCH,
   KANNIYATTUNIRAPPU.

3. **M.V. GEORGE AGED 59 YEARS,**
   ITS TRUSTEE, MUREECKAL VEEDU,
   THALAKKODU P.O., KANAYANNUR VILLAGE.

4. **JOY, AGED ABOUT 47 YEARS,**
   ITS TRUSTEE, S/O. MANI PADINJAREKKUDIYIL
   KAKKAPPILLY KARA, THIRUVANIYOOR VILLAGE.

BY ADV. SRI.S.SREEKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

C.R.P..NO.771 OF 2006 (E)

Dated this the 18 th day of December, 2006.

ORDER

Petitioners are decree holders in O.S.249/98. Respondents are judgment debtors. As per the decree dated 19.12.00, judgment debtors were restrained from selling the rubber trees for slaughter tapping, without the consent of General Body of first judgment debtor, Church. E.P.21/03 was filed contending that judgment debtors 3 and 4 willfully violated the decree by giving rubber trees for slaughter tapping to one Johny Kuppakkattil and therefore judgment debtors 3 and 4 are to be detained in civil prison for violation of the decree. Judgment debtors 3 and 4 filed a joint petition contending that the decree is not executable and they did not willfully violated the decree and the rubber trees were not given for slaughter tapping either to Johny or to anybody else. Three witnesses were examined by decree holder and two witnesses were examined by judgment debtors Exts. A1, A2 and C1 to C1(a) were marked. C1 report

was filed by the second witness examined on behalf of the decree holder. Learned Munsiff as per impugned order dated 8.6.06 held that there was no evidence to prove that slaughter tapping was done or rubber trees were sold for slaughter tapping as contended by petitioners and dismissed the execution petition. This revision petition is filed challenging that order.

2. Though notice was served on third and fourth respondents, who judgment debtors 3 and 4, they did not appear. Only respondents 1 and 2 appeared. They also supported the case of petitioners.

3. On hearing learned counsel appearing for petitioners and going through the order passed by the executing court, I find that petitioners are to be afforded opportunity to prove that there was slaughter tapping from the rubber trees as claimed by them. Some indications are available in the report submitted by the commissioner, to support the case of petitioner about slaughter tapping. Commissioner did not categorically state that it was

slaughter tapping. Arguments of learned counsel appearing for petitioner was that the nature of the tapping establish that it was not ordinary tapping but slaughter tapping. It is submitted that petitioner may be permitted to get an expert to inspect the property and examine the rubber trees to prove that it was slaughter tapping. In such circumstances impugned order passed by learned Munsiff is to be set aside. The executing court is directed to afford opportunity to petitioner to adduce further evidence. Petitioners are entitled to get an expert appointed for inspection of the rubber trees.

M.SASIDHARAN NAMBIAR,
JUDGE.

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